

1971 Present : H. N. G. Fernando, C.J., and Thamotheram, J.

V. SEENITHAMBY, Appellant, and U. AHAMADULEBBE,
Respondent

S. C. 305, 65 (F)—D. C. Kalmunai, 133/L

Land Development Ordinance—Permit issued thereunder—Subsequent cancellation—Proof.

In this action for declaration of title to two allotments of Crown land, the plaintiff relied for his title on a permit dated 7th September 1954 issued to him by the Gal Oya Development Board. The defendant relied on a permit dated 24th June 1960 issued to him for the same allotments, also by the Gal Oya Development Board.

Held, that strict proof of the due cancellation of the permit issued to the plaintiff was necessary before his title could be defeated.

APPEAL from a judgment of the District Court, Kalmunai.

H. W. Jayewardene, Q.C., with *E. A. G. de Silva* and *S. S. Basnayake*, for the defendant-appellant.

C. Ranganathan, Q.C., with *A. R. Mansoor* and *K. Kanakarathnam*, for the plaintiff-respondent.

Cur. adv. vult.

March 21, 1971. H. N. G. FERNANDO, C.J.—

This was an action by the plaintiff for a declaration that he is entitled to two allotments of Crown land bearing Nos. 47 and 47A in Colony 7 Samanturai Pattu, Amparai District, and for the ejectment of the defendant therefrom.

The plaintiff relied for his title on a permit P1 dated 7th September 1954 issued to him for these allotments by the Gal Oya Development Board. The defendant, who admittedly was in possession of these allotments at the time of the institution of this action, relied on a permit D1 dated 24th June 1960 issued to him for the same allotments, also by the Gal Oya Development Board.

The decision of the action turned on the question whether the permit P1 had been duly cancelled prior to the grant to the defendant of his permit dated 24th June 1960. On this question the learned District Judge held that it had not been proved that the permit P1 had been duly cancelled; decree was accordingly entered in favour of the plaintiff.

The defendant called a witness, one Amunugama, who had signed the permit D1 in 1960. This witness stated in evidence that he had earlier signed an order under the Land Development Ordinance cancelling the permit P1. According to him, the office copy of the order of cancellation had been lost, and on this ground the defendant sought to rely on his oral testimony as to the making of the alleged order of cancellation.

The learned trial Judge does not appear to have been satisfied with the evidence of Amunugama on both these points. Furthermore, he held that even if Amunugama had signed an order of cancellation, it has not been proved that Amunugama had authority from the Gal Oya Development Board to make or sign such an order.

Having heard the arguments of Counsel for the appellant I am unable to say in appeal that the learned Judge should necessarily have accepted the evidence of Amunugama or have presumed that a due order of cancellation must have preceded the issue of the permit D1. The judgment and decree under appeal have therefore to be affirmed.

An unusual feature of this case is that because the defendant failed to adduce satisfactory proof of the due cancellation of the permit P1, the plaintiff has to be declared entitled to possession of two allotments of Crown land, and the defendant has to be ejected therefrom despite his being the holder of the permit D1 issued on behalf of the Crown. In the result, the plaintiff will under the present decree be placed in possession of Crown land, although his permit for that land may in fact be no longer valid. Moreover it does seem most unfortunate that the defendant has to be ejected from these allotments which he has probably possessed and cultivated for a long period.

According to the evidence of Amunugama, the responsibility for the administration of the Land Development Ordinance in the Gal Oya area was restored to the Government Agent when the Gal Oya Development Board ceased to function under that name. Apparently at that stage the files relating to these allotments were transferred from the Board's office to the Kachcheri. If these facts be correct and if the files or relevant papers were misplaced in consequence, the defendant's inability to adduce strict proof of the cancellation of the permit P1 may have been due to causes beyond his control.

I desire accordingly to make it clear that if the true position be that the permit P1 was duly cancelled, the decree in this action will not preclude the authorities administering the Land Development Ordinance from taking such action as they may consider expedient to eject the plaintiff from these allotments, or from restoring possession to the defendant by the issue to him of a fresh permit.

The appeal is dismissed with costs.

THAMOTHERAM, J.— I agree.

Appeal dismissed.